

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

<b>Carolyn L. McKenzie,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 2:03-2908</b>
	)	
<b>vs.</b>	)	
	)	<b>ORDER</b>
<b>Carolina Care Plan, Inc.,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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In this Employment Retirement Security Income Act (ERISA) action, the plaintiff challenged the defendant's decision to deny coverage for a cochlear implant. On January 21, 2005, the Court reversed the defendant's decision and ordered the defendant to provide the appropriate coverage for the plaintiff's cochlear implant. The Clerk entered judgment on January 21, 2005. On January 31, 2005, the defendant filed a motion to amend the judgment. The Court granted the motion and ordered the parties to submit additional evidence regarding the proper standard of review the Court should apply to the defendant's decision to deny coverage. On July 25, 2005, the Court sustained its earlier decision requiring the defendant to provide coverage.

On August 12, 2005, pursuant to 29 U.S.C. § 1132(g)(1), the Court awarded the plaintiff reasonable attorney's fees for services performed until February 3, 2005, the date the plaintiff filed the first motion for attorney's fees. On August 12, 2005, the plaintiff filed a motion for additional attorney's fees she incurred while contesting the defendant's motion to amend the Court's January 21, 2005, order to provide coverage for the plaintiff's cochlear implant. On August 29, 2005, the defendant filed its opposition, and on September 19, 2005, the plaintiff

replied.

On September 20, 2005, the defendant filed a notice of appeal of the order requiring the defendant to cover the cochlear implant and the order awarding attorney's fees. Pursuant to Rule 54(d)(2)(B) of the Federal Rules of Civil Procedure, the Court denies the supplemental motion for attorney's fees but grants the plaintiff leave to file a renewed supplemental motion for attorney's fees within 30 days after the Fourth Circuit Court of Appeals renders a decision on the defendant's appeal.<sup>1</sup>

**AND IT IS SO ORDERED.**



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**C. WESTON HOUCK  
UNITED STATES DISTRICT JUDGE**

January 26, 2006  
Charleston, South Carolina

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<sup>1</sup> This order expresses no opinion regarding the issues presented in this dispute over additional attorney's fees, including the issue of whether the supplemental motion was timely.